

0408189071001

WEL 09-135

READ INSTRUCTIONS CAREFULLY  
BEFORE PROCEEDING

FCC/US BANK AUG 17 2009

FEDERAL COMMUNICATIONS COMMISSION  
REMITTANCE ADVICE  
FORM 159

Approved by OMB  
3040-0589  
Page No. 1 of 2

(1) LOCKBOX # <b>979091</b>		<b>DOCKET FILE COPY</b>		SPECIAL USE ONLY	
				FCC USE ONLY	
<b>SECTION A - PAYER INFORMATION</b>					
(2) PAYER NAME (if paying by credit card enter name exactly as it appears on the card) <b>Nigel Alexander</b>				(3) TOTAL AMOUNT PAID (U.S. Dollars and cents) <b>\$1,015.00</b>	
(4) STREET ADDRESS LINE NO. 1 <b>Liberty-Bell Telecom LLC</b>					
(5) STREET ADDRESS LINE NO. 2 <b>2460 West 26th Ave, Suite 380-C</b>					
(6) CITY <b>Denver</b>				(7) STATE <b>CO</b>	(8) ZIP CODE <b>80211</b>
(9) DAYTIME TELEPHONE NUMBER (include area code) <b>303-831-1977</b>				(10) COUNTRY CODE (if not in U.S.A.)	
<b>FCC REGISTRATION NUMBER (FRN) REQUIRED</b>					
(11) PAYER (FRN) <b>0010436087</b>				(12) FCC USE ONLY	
IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C) COMPLETE SECTION BELOW FOR EACH SERVICE. IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET					
(13) APPLICANT NAME <b>Liberty-Bell Telecom LLC</b>					
(14) STREET ADDRESS LINE NO. 1 <b>2460 West 26th Ave</b>					
(15) STREET ADDRESS LINE NO. 2 <b>Suite 380-C</b>					
(16) CITY <b>Denver</b>				(17) STATE <b>CO</b>	(18) ZIP CODE <b>80211</b>
(19) DAYTIME TELEPHONE NUMBER (include area code) <b>303-831-1977</b>				(20) COUNTRY CODE (if not in U.S.A.)	
<b>FCC REGISTRATION NUMBER (FRN) REQUIRED</b>					
(21) APPLICANT (FRN) <b>0010436087</b>				(22) FCC USE ONLY	
COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET					
(23A) CALL SIGN/OTHER ID <b>Domestic 214</b>		(24A) PAYMENT TYPE CODE <b>CUT</b>		(25A) QUANTITY <b>1</b>	
(26A) FEE DUE FOR (PTC) <b>\$1,015.00</b>		(27A) TOTAL FEE <b>\$1,015.00</b>		FCC USE ONLY	
(28A) FCC CODE 1		(29A) FCC CODE 2			
(23B) CALL SIGN/OTHER ID		(24B) PAYMENT TYPE CODE		(25B) QUANTITY	
(26B) FEE DUE FOR (PTC)		(27B) TOTAL FEE		FCC USE ONLY	
(28B) FCC CODE 1		(29B) FCC CODE 2			
<b>SECTION D - CERTIFICATION</b>					
<b>CERTIFICATION STATEMENT</b>					

# PAID BY CREDIT CARD

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of the Joint Application of	)	
	)	
Impact Telecom, Inc.,	)	
Transferor	)	File No. _____
and	)	
	)	
Liberty-Bell Telecom LLC	)	
Transferee	)	
	)	
For Consent to Transfer Certain Assets and	)	
Customers Pursuant to Section 214 of the	)	
Communications Act of 1934, as amended.	)	

## JOINT APPLICATION

Impact Telecom, Inc., ("Impact") and Liberty-Bell Telecom, LLC., ("Liberty"), (collectively, the "Applicants"), through their undersigned representatives and pursuant to Section 214 of the Communications Act of 1934, as amended, (47 U.S.C. § 214), and Sections 63.03, 63.04(a), and 63.18 of the Commission's Rules, hereby submit this application ("Application") respectfully requesting the Commission approval or such authority as may be necessary or required to enable Liberty, a non-dominant competitive carrier vested with global or limited global resale authority under Section 63.18(e)(2), to acquire certain of the assets of Impact, as described below as "Acquired Assets." Impact is also a non-dominant competitive carrier with global or limited global resale authority under Section 63.18(e)(2). As further described below, the proposed transaction is entitled to streamlined treatment under Section 63.03(b)(2)(i) of the Commission's rules for transfers of domestic authorizations.

**A. DESCRIPTION OF THE PROPOSED TRANSACTION AS REQUIRED BY RULE 63.04(A)(6):**

On August 14, 2009 (the "Transaction Date"), Liberty and Impact entered into that certain Asset Purchase Agreement ("Purchase Agreement"), pursuant to which Liberty has agreed to purchase from Impact certain regulated assets ("Acquired Assets")

consisting of those customer accounts held by Impact that meet the following criteria as of the Transaction Date:

- (a) receives phone service from Impact that is delivered by Qwest on an analog circuit and/or broadband service from Impact which is delivered by Qwest on ATM DSL facility using a third party Megahost for ISP services; and
- (b) is located within the States of Colorado, Utah or New Mexico.

Pursuant to Section 1.5 of the Purchase Agreement, the Parties intend that the closing of the purchase and sale of the acquired Assets (the “Closing”) will take place on the earlier of (a) October 1, 2009, or (b) the date upon which the Parties receive regulatory approval (the “Closing Date”). In addition to the Commission’s approval of this application, Section 15 of the Purchase Agreement makes the Closing subject to the execution and/or receipt of certain state required notifications and/or approvals pending before the Colorado Public Utilities Commission, the Utah Public Service Commission and the New Mexico Public regulation Commission.

Upon obtaining regulatory approval, Impact will immediately transfer the Acquired Assets to Liberty, who will thereafter commence to provide any Affected Customer (as defined below) electing not to switch to another provider with the same services that the Affected Customers previously received from Impact on the same terms, rates and conditions. Accordingly, the applicants emphasize that the transition in service from Impact to Liberty will be virtually seamless and completely transparent to the Affected Customers. The Affected Customers will not incur any charges as a result of the change in service provider from Impact to Liberty. In contemplation of the Closing, Liberty and Impact have provided those of Impact’s customers that constitute the Acquired Assets (the “Affected Customers”) with comprehensive notice in accordance with Section 64.1120(e) of the Commission’s Rules, 47 U.S.C. § 64.1120(e)(3) (see notices provided by Liberty to Impact customers, attached hereto as **Exhibit A**, **Exhibit B**, and **Exhibit C**). In addition, Liberty, as the acquiring carrier, will file with the Commission the notice and certification required by Section 64.1120(e)(1) of the Commission’s rules, attached hereto as **Exhibit D**.

**B. REQUEST FOR STREAMLINED PROCESSING PURSUANT TO RULE 63.04(a)(8):**

The parties respectfully request submit that this Application is appropriate for streamlined treatment pursuant to Section 63.03(b)(2) of the Commission's Rules, (47 C.F.R. § 63.03(b)(2)), based on the following factors:

- (a) Upon completion of the Closing, Liberty will have a market share in the interstate, interexchange market of substantially less than ten percent (10%);
- (b) Upon completion of the Closing, every geographic area in which Liberty will provide competitive telephone exchange access services is served by a dominant local exchange carrier that is not party to the Purchase Agreement; and
- (c) Neither Liberty nor Impact are dominant with respect to any services.

The Applicants understand and acknowledge that because the proposed transaction meets the conditions of Section 63.03(b)(2) of the Commission's Rules, 47 C.F.R. § 63.03(b)(2), the application will be granted on the 31st day following the release of the Public Notice of such application without further action by the Commission unless the Commission advises the Applicants to the contrary. *See* 47 C.F.R. 63.03(a).

**D. STATEMENT OF PUBLIC INTEREST AS REQUIRED BY RULE 63.04(A)(12):**

Applicants respectfully submit that approval of the Application would serve the public interest by ensuring that the Affected Customers experience no interruption of service and will continue to receive the same services on the same rates, terms and conditions backed by the support services of Liberty. Moreover, Applicants have provided the affected Customers with clear, transparent notice of the proposed transaction affording the Affected Customers the opportunity to switch providers or take advantage of the support services offered by both Liberty and Impact to understand how the proposed change in service providers will affect them, if at all, and what benefits they will receive. Finally, as the Affected Customers will be new customers for Liberty, Liberty will be greatly incentivized to earn the loyalty of the Affected Customers with superior service, offers and support.

**E. DESCRIPTION OF THE APPLICANTS:**

**1. Liberty-Bell Telecom, LLC.**

Founded in 2003, Liberty is non-facilities based competitive local exchange carrier based in Denver, Colorado. Liberty purchases local and long distance services from Qwest Communications International, Inc. and resells those services to small business and residential customers located throughout Colorado. As of 2009, Liberty,

with a staff of 47 employees, services approximately 4,000 business lines and about 6,000 residential lines and generates about \$10,000,000 in annual revenues.

**2. Impact Telecom, Inc.**

Located in Greenwood Village, Colorado, Impact currently employs 9 people and provides business, residential, VoIP and wholesale services to about 4,600 small business and residential service lines located in Colorado, Utah and New Mexico. Impact generates approximately \$3 million in revenues.

**F. OTHER INFORMATION REQUIRED BY SECTION 63.04(a):**

In support of the application, the parties respectfully submit the following information to satisfy the requirements of Section 63.04(a) of the Commission's Rules, 47 U.S.C. § 63.04(a):

**1. 63.04(a)(1): Name, Address and Telephone Number of each Applicant:**

Liberty-Bell Telecom, LLC  
2460 West 26<sup>th</sup> Ave, Suite 380-C  
Denver, CO, 80211  
Telephone: 303-831-1977,  
Facsimile: 303-831-1988

Impact Telecom, Inc.  
9250 E. Costilla Ave  
Suite 400  
Greenwood Village, CO, 80112  
Telephone: 877-427-8776,  
Facsimile: 303-675-6090

**2. 63.04(a)(2): State in which Each Applicant is Organized:**

Impact is corporation incorporated under the laws of the State of Nevada.

Liberty is a limited liability corporation, duly organized and existing under the laws of the State of Colorado.

**3. 63.04(a)(3): Contacts for Correspondence regarding This Application:**

Please direct all correspondence regarding this application to:

**Liberty:** Nigel Alexander, Manager  
Liberty-Bell Telecom, LLC  
2460 West 26<sup>th</sup> Ave, Suite 380-C  
Denver, CO, 80211  
Telephone: 303 831 1977,  
Facsimile: 303 831 1988  
E-mail: nalexander@libertybelltelecom.com

Ian O'Neill, Esq.  
Holland & Hart LLP  
555 17th Street, Suite 3200  
Denver, Colorado, 80202  
Telephone: 303-295-8561  
Facsimile: 303-291-9125  
E-mail: ivoneill@hollandhart.com  
Counsel to Liberty-Bell Telecom, LLC.

**Impact:** Bob Beaty, President  
Impact Telecom, Inc.  
9250 E. Costilla Ave, Suite 400  
Greenwood Villager, CO 80112  
Telephone: 877-427-8776,  
Facsimile: 303-675-6090  
E-mail: bbeaty@impacttelecom.net

**4. 63.04(a)(4): Name, Address, Citizenship and Principal Business of 10% or Greater Holders:**

**Liberty:** Liberty-Bell Telecom, LLC is a Colorado Limited Liability Corporation whose principal place of business is located at 2460 West 26<sup>th</sup> Ave, Suite 380-C, Denver, Colorado, 80211. There are only two persons that currently own a greater than 10% interest in Liberty: (a) Ms. Brenda Alexander, a United States Citizen with a principal residence at 3080 West 63<sup>rd</sup> Ave, Denver, Colorado, 80221, owns fifty-six percent (56%) of the common stock of Liberty as of the date of this Application; and (b) Mr. Thomas G. Martino, a United States citizen with a principal residence of 7900 Fox Creek Trail, Franktown, Colorado, 80116, owns 12.3% of the common stock of Liberty as of the date of this Application. Ms Alexander's principal business is that of a real estate broker. Mr. Martino's principal occupation is that of a radio show host. An ownership chart for Liberty is attached hereto as **Exhibit E**.

**Impact:** Impact is a Nevada corporation whose principal place of business is 9250 E. Costilla Ave, Suite 400, Greenwood Village, CO 80112. As of the date of this Application, there is only one person that currently owns a greater than 10% interest in Impact: Mr. Robert Beaty, of 365 Thorn Apple Way, Castle Rock, CO 80108, owns 80% of the common stock of Impact. Mr. Robert Beaty's principal occupation is telecommunications professional.

**5. 63.04(a)(5): Anti-Drug Abuse Act Certification**

Liberty and Impact hereby certify pursuant to Sections 1.2001 through 1.2003 of the Commission's Rules, 47. U.S.C. §§ 1.2001-1.2003, that neither is subject to a denial of Federal benefits, as provided in the anti-Drug Abuse Act of 1988, 2 U.S.C. § 3301.

**7. 63.04(a)(7): Description of the Geographic Areas in which the Applicants Offer Domestic Telecommunications Service and the Services Offered in Such Areas:**

Liberty provides local and long distance services to customers throughout Colorado.

Impact provides local, long distance and Internet broadband services to customers throughout Colorado, New Mexico, and Utah.

**9. 63.04(a)(9): Identification of all other Commission applications related to this Transaction:**

None.

**11. 63.04(a)(11): Identification of any Other Separately Filed Waiver Requests:**

None.

**G. CONCLUSION**

For the reasons stated above, Applicants respectfully propose that the public interest, convenience, and necessity would be furthered by the grant of this application. The Applicants therefore respectfully request that the Commission consider and approve the application expeditiously to permit Applicants to consummate the proposed Transaction and assign the assets of Impact to Liberty, thereby transferring control of part of Impact's Customer Base to Liberty as soon as possible.

Transaction and assign the assets of Impact to Liberty, thereby transferring control of part of Impact's Customer Base to Liberty as soon as possible.

Respectfully submitted,



Nigel Alexander  
Liberty-Bell Telecom, LLC  
2460 West 26<sup>th</sup> Ave, Suite 380-C  
Denver, CO, 80211  
Telephone: 303 831 1977,  
Facsimile: 303 831 1988  
E-mail: [nalexander@libertybelltelecom.com](mailto:nalexander@libertybelltelecom.com)

Manager  
Liberty-Bell Telecom, LLC



Bob Beaty, President  
Impact Telecom, Inc.  
9250 E. Costilla Ave, Suite 400  
Greenwood Villager, CO 80112  
Telephone: 877-427-8776,  
Facsimile: 303-675-6090  
E-mail: [bbeaty@impacttelecom.net](mailto:bbeaty@impacttelecom.net)

President  
Impact Telecom, Inc.

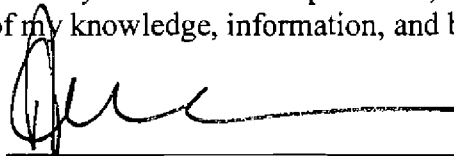




STATE OF COLORADO     )  
                                      ) ss.  
COUNTY OF DENVER     )

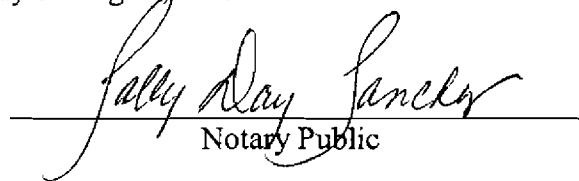
**VERIFICATION**

I, Nigel Alexander, state that I am the Manager of Liberty-Bell Telecom, LLC.; that I am authorized to make this Verification on behalf of Liberty-Bell Telecom, LLC; and that the foregoing filing was prepared under my direction and supervision; and that the contents are true and correct to the best of my knowledge, information, and belief.



\_\_\_\_\_  
Nigel Alexander  
Manager  
Liberty-Bell Telecom, LLC

Sworn and subscribed before me this 14th day of August, 2009

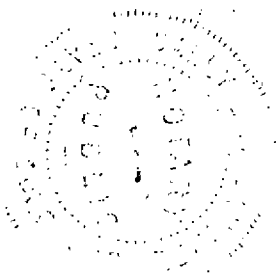
  
\_\_\_\_\_  
Notary Public

[Seal or Stamp]

\_\_\_\_\_

[Printed Name]

My appointment expires December 14, 2009



STATE OF COLORADO     )  
  ) ss.  
COUNTY OF DENVER     )

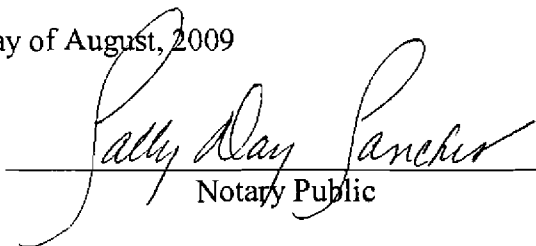
**VERIFICATION**

I, Bob Beaty, state that I am the President of Impact Telecom, Inc.; that I am authorized to make this Verification on behalf of Impact Telecom, Inc; and that the foregoing filing was prepared under my direction and supervision; and that the contents are true and correct to the best of my knowledge, information, and belief.



Bob Beaty  
President  
Impact Telecom, Inc.

Sworn and subscribed before me this 14th day of August, 2009



Notary Public

[Seal or Stamp]

[Printed Name]

My appointment expires December 14, 2009

## **LIST OF EXHIBITS**

- |           |   |
|-----------|---|
| Exhibit A | Copy of Notice of Proposed Transaction Provided to Transferring Customers of Impact Telecom, Inc., located in Colorado.   |
| Exhibit B | Copy of Notice of Proposed Transaction Provided to Transferring Customers of Impact Telecom, Inc., located in New Mexico. |
| Exhibit C | Copy of Notice of Proposed Transaction Provided to Transferring Customers of Impact Telecom, Inc., located in Utah.       |
| Exhibit D | Copy of notice and certification required by Section 64.1120(e)(1) of the Commission's Rules                              |
| Exhibit E | Corporate Structure Chart for Liberty-Bell Telecom, LLC.  |

## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement"), dated as of August 14th, 2009, is entered into by and among Impact Telecom Inc., a Nevada corporation ("Seller"), Liberty-Bell Telecom, LLC, a Colorado limited liability company ("Buyer"), and solely with respect to Sections 7.10, 8.1 and 8.2, Robert Beaty, the President of Seller ("Beaty"), and solely with respect to Section 2.2(a)(iii), Nigel Alexander, the Manager of Buyer ("Alexander").

### RECITAL

WHEREAS, Seller desires to sell and Buyer desires to purchase certain of Seller's customer accounts (the "Customers") on the terms and subject to the conditions of this Agreement. The services provided to the Customers shall be referred to as the "Services".

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recital and of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

#### 1. PURCHASE AND SALE OF ACQUIRED ASSETS; THE CLOSING.

1.1 Acquired Assets. On the terms and subject to the conditions of this Agreement, Seller agrees to sell, transfer, convey and deliver to Buyer, and Buyer agrees to purchase from Seller, all of the Acquired Assets (as hereinafter defined), wherever located and whether or not reflected on Seller's books and records. The assets to be transferred to Buyer at the Closing shall include the following (the "Acquired Assets"):

(a) The Customers set forth on Schedule 1.1(a), including any term contracts. To be included in the Customers, an account must have the following characteristics:

- (i) Phone service must be delivered by Qwest on an analog circuit;
- (ii) Be located in Colorado, Utah or New Mexico;
- (iii) Broadband must be delivered by Qwest on an ATM DSL facility using a third party Megahost for ISP services; and
- (iv) At Closing, the account must not have any balance due greater than 90 days old.

(b) all revenues from the Customers for service periods following the Closing;

(c) all contracts with vendors that support the Customers, which are listed on Schedule 1.1(c) ("Vendors");

(d) all modems and other equipment located at Customers' locations;

W RB

(e) all data and records related to the Customers, including all files; records, maintenance records and other documents;

The Acquired Assets will be transferred by Seller to Buyer in accordance with the terms of this Agreement free and clear of any and all liens, security interests or other encumbrances.

1.2 Excluded Assets. Seller is retaining the following property and assets, which are excluded from the sale to Buyer hereunder (the "Excluded Assets"):

(a) all of Seller's cash and cash equivalents (including marketable securities and short-term investments);

(b) all of Seller's accounts receivable relating to the Customers for service periods up to and including the Closing Date;

(c) Seller's customer accounts where Seller provides services using Qwest IPDSL, wholesale long distance or network elements provided by vendors other than Qwest;

(d) all office equipment and computers of Seller not used in the support of the Customers;

(e) all office furniture of Seller; and

(f) all of Seller's rights to the Impact Telecom name, the Impact Telecom website and domain name, and all e-mail and other contact infrastructure of Seller.

(g) all other assets not listed in Section 1.1 above.

1.3 No Assumption of Liabilities. Buyer will not assume any liabilities of Seller and Seller will be solely liable for all accounts payable and all other liabilities arising from the ownership of the Acquired Assets up to and including the Closing Date, whether or not reflected on Seller's books and records. If necessary, Seller will use the Purchase Price to settle any outstanding accounts with Vendors, all of whom will be paid in full for services delivered up to and including the Closing Date.

1.4 Assumption of Vendor Contracts. Buyer shall assume responsibility for charges from Vendors relating to service periods after the Closing Date.

1.5 Closing. The closing (the "Closing") of the purchase and sale of the Acquired Assets hereunder shall take place on the earlier of (a) October 1, 2009, if all conditions to the parties' obligations to consummate the transactions contemplated hereby set forth in Articles 5 and 6 (other than conditions with respect to actions the parties will take at the Closing itself) have been satisfied or waived, or (b) promptly following the satisfaction or waiver of the Closing conditions set forth in Articles 5 and 6 (other than conditions with respect to actions the parties will take at the Closing itself) (the "Closing Date").

HA RB

## 2. PURCHASE PRICE

2.1 Generally. Subject to any adjustments pursuant to Section 2.2(a)(iv), Section 2.2(b) or Section 2.2(c) the purchase price to be paid by Buyer to Seller for the Acquired Assets hereunder shall be \$800,000 (the "Purchase Price"). The Purchase Price shall be allocated 100% to intangible customer accounts and the parties agree not to take any position (whether in audits, tax returns or otherwise) that is inconsistent with such allocation unless required to do so by applicable law.

2.2 Payment of the Purchase Price. Buyer shall pay the Purchase Price to Seller as follows:

(a) Subject to any adjustments pursuant to Sections 2.2(b) and 2.2(c), will deliver to Seller:

- (i) On signing of this Agreement, \$50,000 as a downpayment, which sum will be repaid in full by Seller to Buyer on November 1<sup>st</sup>, 2009 if the Closing has not occurred, regardless of why the Closing has not occurred, and
- (ii) At Closing, \$450,000 of immediately available funds; *provided, however*, that the parties agree that to the extent there are any liabilities to Vendors outstanding as of the Closing, this amount will first be used to satisfy such outstanding liabilities, and
- (iii) At Closing, an unsecured promissory note in the principal amount of \$200,000, substantially in the form of Exhibit A attached hereto (the "Note"). Pursuant to the terms of the Note, Buyer will make five quarterly payments to Seller of \$40,000, plus any unpaid, accrued interest thereon, on each of the following dates: December 31, 2009, March 31, 2010, June 30, 2010, September 30, 2010 and December 31, 2010. The Note will be personally guaranteed by Alexander, and
- (iv) On or before December 31, 2010, Buyer shall pay to Seller a further \$100,000 within 30 days of the following two conditions both being met:
  - (i) Qwest makes direct access to its Denver Metro IPDSL network available to Buyer at competitive wholesale prices, or, a competitive IP service (from Qwest or another equivalent supplier) becomes available throughout the Denver metro area that is substitutable in terms of speed, performance and price, and
  - (ii) Buyer enters into an extension (or a substitute contract) to its QLSP agreement, for a minimum period of two years commencing on January 1, 2011, and at prices substantially equivalent to the prices applicable to Buyer under its QLSP contract as of the date hereof. Buyer will use best efforts to satisfy these conditions, and will provide Seller quarterly progress updates towards meeting these conditions.

*MRD*

(b) Notwithstanding the provisions of Section 2.2(a) but subject to Section 2.2(c), the Purchase Price shall be adjusted by the parties prior to the Closing as follows:

- (i) The Purchase Price will be subject to an automatic pro-rata reduction at the Closing to the extent that mutually agreed upon analysis shows that the Monthly Gross Profit of the Customers for the calendar month immediately preceding the calendar month in which the Closing occurs is less than \$85,000. The term "Monthly Gross Profit" as used herein shall mean the monthly revenues of the Customers earned as a result of delivery of Services, excluding all applicable taxes and other pass-through fees, and deducting the direct costs associated with the provision of the Services producing such revenues (such direct costs to include, without limitation, charges payable by Seller to Qwest at Seller's current rates, and charges paid by Seller to other Vendors at applicable current rates). In the event the Purchase Price is subject to the pro-rata reduction as described herein, 100% of such reduction will apply to the portion of the Purchase Price to be delivered at Closing. (*Pro-rata example – Monthly Gross Profit of \$75,000 would amend the purchase price to be \$705,882.  $\$75,000/\$85,000 = 0.882 \times \$800,000 = \$705,882$* )
- (ii) If mutually agreed upon analysis shows that the 2009 year-to-date average monthly Customer churn rate is greater than 2.25% (two and one-quarter percent), the parties agree to use good faith efforts to negotiate a reduction to the Purchase Price which reflects the reduction in projected future cash flow from the higher churn rate. In calculating the Customer churn rate, Customer accounts that terminated in less than 90 days from inception shall be excluded. In the event the Purchase Price is subject to reduction as described in this Section 2.2(b)(ii), such reduction will apply 100% to the portion of the Purchase Price delivered at Closing. If the parties cannot agree on a reduction of the Purchase Price, either Buyer or Seller may terminate this Agreement pursuant to Section 11.1(d).

(c) If the Closing does not occur on or before October 31, 2009 and as a result, Buyer fails to aggregate the Qwest lines from the Customers with Buyer's own Qwest phone line purchases for the purposes of QLSP discount calculations, the Purchase Price will be reduced by \$100,000. Such reduction will apply 100% to the portion of the Purchase Price payable at Closing.

### 3. REPRESENTATIONS AND WARRANTIES OF SELLER.

Seller makes the following representations and warranties to Buyer, each of which is true and correct on the date hereof, shall remain true and correct on and including the Closing Date, shall be unaffected by any investigation heretofore or hereafter made by Buyer, or any knowledge of Buyer, and shall survive the Closing pursuant to Section 11.1, except as set forth in the disclosure schedule accompanying this Agreement.

*RB*

3.1 Corporate Organization. Seller is a corporation duly organized and validly existing, is in good standing under the laws of the State of Nevada, and has the corporate power and authority to own and operate its properties, including the Acquired Assets, and carry on the business as now being conducted. Seller is duly qualified to do business and is in good standing as a foreign corporation in each jurisdiction where its ownership or operation of the Acquired Assets or its conduct of the business requires such qualification.

3.2 Required Approvals. Subject to the receipt of approvals to the transactions contemplated hereunder from (a) the Colorado, Utah and New Mexico Public Utilities Commissions (b) the Federal Communications Commission and (c) the Vendors (collectively "Required Approvals"), the execution and delivery by Seller of this Agreement and the other agreements, documents and instruments contemplated hereby, the consummation of the transactions contemplated hereby, and the performance or observance by Seller of any of the terms and conditions hereof, will not (i) conflict with, or result in a breach or violation of the terms or conditions of, or constitute a default under, the articles of incorporation or by-laws of Seller, any award of any arbitrator, or any indenture, contract or agreement (including any agreement with shareholders), instrument, order, judgment, decree, statute, law, rule or regulation to which Seller or any of the Acquired Assets are subject, (ii) result in the creation of any lien or other encumbrance on any of the Acquired Assets.

3.3 Corporate Power and Authority. Seller has the corporate power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery by Seller of this Agreement and the other agreements, documents and instruments contemplated hereby, and the consummation of the transactions contemplated hereby, have been duly authorized by all necessary corporate action. Subject to the receipt of the Required Approvals, this Agreement and all other instruments required hereby to be executed and delivered by Seller are, or when delivered will be, legal, valid and binding obligations of Seller and Beaty, as applicable, enforceable in accordance with their respective terms.

3.4 Actions, Suits, Proceedings. There are no requests, notices, investigations, claims, demands, actions, suits, hearings or other legal or administrative proceedings pending or, to the knowledge of Seller, threatened against Seller or any of Seller's property in any court or before any federal, state, municipal or other governmental agency or authority which, (a) if decided adversely to Seller, would have a material adverse effect upon the Customers or the Acquired Assets, (b) seeks to restrain or prohibit the transactions contemplated by this Agreement or obtain any damages in connection therewith, or (c) in any respect calls into question the validity of this Agreement.

3.5 No Material Violations. Seller is not in material violation of any applicable law, rule or regulation relating to the Acquired Assets. There are no requests, notices, investigations, claims, demands, actions, suits, hearings or other legal or administrative proceedings against Seller alleging or investigating the existence of any such violation.

AA KB



3.6 Title to Property. Seller has good and valid title to the Acquired Assets, free and clear of all mortgages, liens, pledges, charges and other encumbrances.

3.7 Employee Matters. Seller has delivered to Buyer a true, complete and correct list of employees, their dates of hire, base salary and commission or bonus schedule (if applicable). Seller is in compliance with the terms of all applicable laws relating to the employment of labor or engagement of other service providers, including all such applicable laws relating to wages, hours, employment standards, employee classification, collective bargaining, immigration, discrimination, civil rights, safety and health, and workers' compensation to which Seller and Seller's employees are subject. No employee of Seller will become entitled to any bonus, retirement, severance, job security or similar benefit or any enhanced benefit solely as a result of the transactions contemplated under this Agreement.

3.8 Contracts. Seller has delivered to Buyer a true, complete and correct copy of each written agreement, and a written summary setting forth the material terms and conditions of each oral agreement with the Vendors. With respect to each of these agreements: (a) the agreement is legal, valid, binding, enforceable, and in full force and effect; (b) no party is in breach or default, and no event has occurred that with notice or lapse of time or both would constitute a breach or default, or permit termination, modification, or acceleration under the agreement; and (c) no party has repudiated any provision of the agreement.

3.9 Licenses and Permits. Seller has all material licenses and permits required by law or otherwise necessary for the proper operation of the business. All licenses and permits granted to Seller are in full force and effect, and no action to terminate, withdraw, not renew or materially limit or otherwise change any such license or permit is pending or has been threatened by any governmental agency or other party. The consummation of the transactions contemplated by this Agreement will not violate the provisions of, or require Buyer to reapply for, any such license or permit.

3.10 No Material Adverse Change.

(a) Seller has allowed Buyer to review the QuickTel database of recurring and non-recurring revenue charged to the Customers ("Customer Data"). Since the date of the most recent Customer Data provided, there has not been:

- (i) any material adverse change in the Acquired Assets or the Customers;
- (ii) any mortgage, pledge or other lien or encumbrance affecting any of the Acquired Assets; or
- (iii) any other material deviation from the ordinary and usual course by Seller in the conduct of the business.

3.11 Taxes. Seller has filed all federal, state and local tax returns required to be filed by it, and has paid all federal, state and local income, profits, franchise, sales, use, property, excise, payroll, and other taxes and assessments (including interest and

#18

penalties) to the extent that such have become due. No claims for additional taxes have been asserted against Seller and no audits are pending with respect to any tax liabilities of Seller.

3.12 Brokers and Finders. Seller has not retained or engaged any broker, finder or other financial intermediary in connection with the transactions contemplated by this Agreement.

4. **REPRESENTATIONS AND WARRANTIES OF BUYER**. Buyer makes the following representations and warranties to Seller, each of which is true and correct on the date hereof, shall remain true and correct on and including the Closing Date, shall be unaffected by any investigation heretofore or hereafter made by Seller, or any knowledge of Seller, and shall survive the Closing pursuant to Section 11.1.

4.1 Corporate Organization. Buyer is a limited liability company duly formed and validly existing and in good standing under the laws of the State of Colorado.

4.2 Conflicting Agreements, Governmental Consents. Subject to the receipt of the Required Approvals, the execution and delivery by Buyer of this Agreement and the other agreements, documents and instruments contemplated hereby, the consummation of the transactions contemplated hereby and the performance or observance by Buyer of any of the terms and conditions hereof, will not conflict with, or result in a breach or violation of the terms or conditions of, or constitute a default under, the articles of organization or the operating agreement of Buyer, any award of any arbitrator, or any indenture, contract or agreement (including any agreement with members), instrument, order, judgment, decree, statute, law, rule or regulation to which Buyer is subject.

4.3 Corporate Authority. Buyer has the power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery by Buyer of this Agreement and the other agreements, documents and instruments contemplated hereby, and the consummation of transactions contemplated hereby, have been duly authorized by all necessary action. Subject to the receipt of the Required Approvals, this Agreement and all other documents and instruments required hereby to be executed and delivered by Buyer are, or when delivered will be, legal, valid and binding obligations of Buyer, enforceable in accordance with their respective terms.

4.4 Brokers and Finders. Buyer has not retained or engaged any broker, finder or other financial intermediary in connection with the transactions contemplated by this Agreement.

RB

5. **CONDITIONS TO OBLIGATION OF BUYER AT CLOSING.** The obligation of Buyer to effect the Closing is subject to the satisfaction (or waiver by Buyer), prior to or at the Closing, of the following conditions:

5.1 Representations and Warranties. The representations and warranties of Seller contained in this Agreement shall be true and correct on the Closing Date, as if made on the Closing Date.

5.2 Observance and Performance. Seller shall have observed and performed all covenants and agreements required by this Agreement to be observed or performed by Seller on or prior to the Closing Date.

5.3 No Adverse Change. There shall have occurred no material adverse change in the Acquired Assets or the Customers or results of operations of Seller, and there shall have occurred no event that may in the future cause such a material adverse change.

5.4 No Legal Actions. (a) No court or governmental authority of competent jurisdiction shall have issued an order restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated by this Agreement; (b) no person, firm, corporation or governmental agency shall have instituted an action or proceeding which shall not have been previously dismissed seeking to restrain, enjoin or prohibit the consummation of the transactions contemplated by this Agreement; and (c) no material third-party litigation or other proceeding shall be pending or threatened against Seller or the business.

5.5 Officer's Certificate. Seller shall have delivered to Buyer a certificate of a duly authorized officer of Seller, dated as of the Closing Date and executed by such officer, to the effect that each of the conditions specified above in Sections 5.1, 5.2, 5.3 and 5.4 are satisfied in all respects.

5.6 Required Approvals. Seller and Buyer shall have received the Required Approvals.

5.7 Corporate Approvals. Buyer and Seller shall have received the required board, manager, shareholder and/or member approvals, as applicable, for the purchase and sale of the Acquired Assets and the other transactions contemplated by this Agreement.

5.8 Final Purchase Price. The parties shall have agreed on the adjustments, if any, to the Purchase Price pursuant to Sections 2.2(b) and 2.2(c).

5.9 Employees. All employees on the Employee List (as defined in Section 7.2(c)) shall have accepted Buyer's offer of employment effective immediately following the Closing.

11  
LB

5.10 Transfer Documents. Buyer shall have received such bills of sale, assignments and other documents of transfer reasonably required to transfer to Buyer the interests of Seller in the Acquired Assets consistent with the terms of this Agreement.

5.11 Secretary's Certificate. Seller shall have delivered to Buyer an officer's certificate of a duly authorized officer of Seller, dated the Closing Date and executed by such officer, certifying (a) that attached thereto is a true, correct and complete copy of the resolutions of the shareholders of Seller authorizing the execution, delivery and performance of this Agreement and the other instruments executed in connection herewith and the transactions contemplated herein and therein, as are then in full force and effect, and (b) as to the incumbency and signatures of the officers or other authorized persons of Seller who have signed or will sign this Agreement or any of the other instruments executed in connection herewith.

5.12 Due Diligence. Buyer shall have been satisfied with the results of its due diligence investigation of the Customers and the Acquired Assets.

6. **CONDITIONS TO OBLIGATION OF SELLER AT THE CLOSING**. The obligation of Seller to effect the transactions contemplated by this Agreement at the Closing is subject to the satisfaction (or waiver by Seller) prior to or at the Closing of the following conditions:

6.1 Representations and Warranties. The representations and warranties of Buyer contained in this Agreement shall be true and correct on the Closing Date, as if made on the Closing Date.

6.2 Observance and Performance. Buyer shall have observed and performed all covenants and agreements required by this Agreement to be observed or performed by Buyer on or prior to the Closing.

6.3 No Legal Actions. No court or governmental authority of competent jurisdiction shall have issued an order restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated by this Agreement, and no person, firm, corporation or governmental agency shall have instituted an action or proceeding which shall not have been previously dismissed seeking to restrain, enjoin or prohibit the consummation of the transactions contemplated by this Agreement.

6.4 Officer's Certificate. Buyer shall have delivered to Seller a certificate of a duly authorized officer of Buyer, dated as of the Closing Date and executed by such officer, to the effect that each of the conditions specified above in Sections 6.1, 6.2 and 6.3 are satisfied in all respects.

6.5 Required Approvals. Seller and Buyer shall have received the Required Approvals.

6.6 Final Purchase Price. The parties shall have agreed on the adjustments, if any, to the Purchase Price pursuant to Sections 2.2(b) and 2.2(c).

11  
RB

6.7 Delivery of Purchase Price. Buyer shall have delivered \$500,000, or such lower amount as determined pursuant to Sections 2.2(b) and 2.2(c), to Seller and/or to Seller's creditors as set forth in Section 2.2(a)(i) and Section 2.2(a)(ii), at Closing.

6.8 Note. Buyer shall have delivered the Note to Seller at Closing, in the principal amount of \$200,000.

7. PRE-CLOSING COVENANTS AND AGREEMENTS. During the period from the date hereof until the earlier of the termination of this Agreement in accordance with Article 11 or the Closing:

7.1 Maintenance of Business. Seller will not raise prices to any of the Customers. Seller will continue to operate the business in the ordinary course and in accordance with Seller's past practices, will use reasonable efforts to preserve intact the business organization of the business, will keep available the services of all employees on the Employee List, and will preserve for Buyer the goodwill of vendors, suppliers, Customers and others having business relationships with Seller related to the business. Seller will not materially increase its telemarketing sales activities in the period between signing this Agreement and the Closing.

7.2 Employees.

(a) Seller will not hire any new employees, or effect any increase in compensation or employee benefits for its employees without Buyer's prior written consent.

(b) Buyer does not and will not assume any employment or employee benefit obligation, or any wage or salary payment obligation, including, without limitation, those arising under any pension, profit sharing, deferred compensation, bonus, stock option, severance, welfare, sick leave, vacation, wage or other employee benefit compensation plan, procedure, policy or practice of Seller.

(c) Seller will afford Buyer a reasonable opportunity to interview the employees for prospective employment by Buyer. Seller will furnish to Buyer such information in personnel files as Buyer may reasonably request in connection with determining whether to employ a person presently employed by Seller. No fewer than five days prior to the Closing, Buyer will deliver to Seller a list (the "Employee List") of employees that Buyer will make or will have made offers of employment to, on terms and conditions established by Buyer. Seller will terminate the employment of each employee on the Employee List who accepts Buyer's offer of employment (each, a "Hired Employee") effective at the Closing. On the Closing Date, or as soon as practicable thereafter, but in any event no later than the date required by applicable law, Seller will pay each Hired Employee all accrued wages, salary, commission, bonus and other employee compensation payments (including earned sick leave and earned but unused vacation days) for all periods through and including the Closing Date. In addition, Seller will pay to the Hired Employees or provide for the Hired Employees all other employee benefits maintained by Seller for all periods through and including the Closing Date, all

RB

in accordance with applicable law and such employee benefit plans, and will satisfy all obligations imposed by applicable federal or state law relating to health and other benefit continuation privileges of any former employee of Seller, whether terminated incident to the Closing or otherwise.

7.3 No Modification of Agreements. Seller will not modify or amend any material contract, lease, commitment or agreement to be assigned to or assumed by Buyer hereunder, or waive or assign to any third party any of its rights under any such contract, lease, commitment or agreement, except as agreed to in writing by Buyer.

7.4 Maintenance of Tangible Assets. Seller will maintain all of the Acquired Assets that are tangible assets in good order and repair, ordinary wear and tear excepted.

7.5 No Extraordinary Agreements. Seller will not enter into any contract or agreement which relates to the Acquired Assets and which contains terms or conditions inconsistent with ordinary past business practices of Seller or the continued operation of the business as a going concern.

7.6 Reasonable Best Efforts and Further Assurances. Prior to the Closing, upon the terms and subject to the conditions of this Agreement, Seller and Buyer agree to use reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable (subject to any applicable laws) to consummate the transaction contemplated hereunder as promptly as practicable.

7.7 Inspection Rights. Seller will permit Buyer's employees, agents and representatives (including legal counsel and accountants) during normal business hours and on reasonable notice to Seller to examine all of Seller's books and records reasonably relating to the Customers, and all assets, properties, contracts, tax returns and operating permits, and to otherwise engage in a complete and thorough due diligence review of only the Acquired Assets. Seller agrees to cooperate with such examinations and analyses conducted by Buyer and its representatives and to make Seller's employees and agents reasonably available to discuss such due diligence matters.

7.8 Required Approvals. Each of Buyer and Seller shall promptly apply for or otherwise seek, and use its reasonable best efforts to obtain, all consents, waivers and approvals required to be obtained by it for the consummation of the transactions contemplated hereby.

7.9 Confidentiality and Non-Disclosure. Except for any required disclosure to any person in connection with the parties' application for the Required Approvals, each of Seller and Buyer, covenant and agree to maintain in strict confidence and not to use or disclose to others, any and all information and materials regarding the other party, except that the foregoing obligation of confidentiality will not apply to any confidential information or materials that are, or subsequently become, generally publicly known, other than as a direct or indirect result of a breach of this Agreement. Except for any required disclosure to any person in connection with the parties' application for the

Required Approvals, the existence and terms of this Agreement shall be considered confidential information hereunder.

7.10 Exclusivity. Neither Seller nor Beaty shall directly or indirectly, solicit, initiate, encourage, entertain or consider, any inquiries, proposals or offers from any other corporation, entity or person relating to the possible disposition of the Customers, or any equity interest involving the business operations of Seller (whether by way of an asset or stock sale, merger, consolidation, equity exchange or otherwise). Nothing in this paragraph 7.10 shall prevent Seller from actively attempting to sell other parts of its business, that are not being acquired by Buyer hereunder.

8. POST-CLOSING COVENANTS AND AGREEMENTS. Following the Closing, the parties agree as follows:

8.1 Non-Solicitation. In order to protect the goodwill of the Acquired Assets after the Closing and as a condition precedent to Buyer entering into and performing its obligations under this Agreement and paying the Purchase Price, Seller and Beaty hereby covenant and agree, jointly and severally, to the following restrictions:

(a) From the Closing Date and for ten (10) years thereafter, neither Seller nor Beaty will, directly or indirectly (including as a proprietor, owner, principal, agent, partner, officer, director, stockholder, employee, manager, member, consultant or otherwise) (i) knowingly solicit, request or induce any of the Customers or Vendors to cancel, curtail or otherwise adversely change its business relationship with Buyer; (ii) disparage Buyer or any aspect of Buyer's business products, services, practices or personnel; or (iii) employ any then-current employee of Buyer; *provided, however*, that if Buyer terminates any employee, then Seller may solicit and hire such terminated employee, subject to the terms of any confidentiality, trade secret or noncompetition covenants in effect between Buyer and such terminated employee.

(b) Seller and Beaty acknowledge and affirm that a breach of this Section 8.1 cannot be adequately compensated in an action for damages at law, and equitable relief would be necessary to protect Buyer from a violation of this Section 8.1. Accordingly, Seller and Beaty agree that in the event of any actual breach of such provisions, Buyer shall (in addition to any other remedies which it may have) be entitled to enforce its rights and Seller's and Beaty's obligations under this Section 8.1 not only by an action or actions for damages, but also by an action or actions for specific performance, temporary or permanent injunctive relief or other equitable relief in order to enforce or prevent any violations (whether anticipatory, continuing or future) of the provisions of this Section 8.1. Seller and Beaty further acknowledge that this Section 8.1 constitutes a material inducement to Buyer to complete the transactions contemplated by this Agreement and that Buyer will be relying on the enforceability of this Section 8.1 in consummating the transactions hereunder. If the final judgment of a court of competent jurisdiction declares that any term or provision of this Section 8.1 is invalid or unenforceable, the parties agree that the court making the determination of invalidity or unenforceability will have the power to reduce the scope or duration of the term or provision, to delete specific words or phrases, or to replace any invalid or unenforceable term or provision with a term or

11 RB

provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement will be enforceable as so modified after the expiration of the time within which the judgment may be appealed.

8.2 Confidentiality and Nondisclosure. Seller and Beaty each covenant and agree, from and after the Closing, to maintain in strict confidence and not to use or disclose to others, any and all information and materials regarding the Acquired Assets, and Buyer. Buyer covenants and agrees, from and after the Closing, to maintain in strict confidence and not to use or disclose to others, any and all information and materials regarding Seller or its business, excluding any information or materials regarding the Acquired Assets. Except for any required disclosure to any person in connection with the parties' application for the Required Approvals, the existence and terms of this Agreement shall be considered confidential information hereunder. The foregoing obligations of confidentiality will not apply to any confidential information or materials that are or subsequently become generally publicly known, other than as a direct or indirect result of a breach of this Agreement by Seller or Beaty, on the one hand, or Buyer, on the other hand, as applicable.

8.3 Billing Transition. On the Closing Date, Seller will cease billing the Customers. Any Customers who have been billed for service in advance for periods after the Closing Date will receive appropriate pro-rated credits from Seller for all such prebilled services. Within ten business days following the Closing Date, Seller will issue final statements and refunds to Customers with credit balances. Seller shall be responsible to collect any accounts receivable relating to the periods up to and including the Closing Date. Seller shall collect such accounts receivable in a manner so as not to damage Buyer's relationship with the Customers. Buyer will commence billing of the Customers in accordance with its normal practices on the day after the Closing Date. Buyer and Seller will agree to send a joint letter to all Customers explaining this transaction and the transition process, and Buyer further agrees to include the letter with each Customer's first billing statement. As plans for the integration of Customers into Buyer's billing system become more defined over the next few weeks, Buyer agrees to consider an alternative billing transition method that Seller may request. Buyer and Seller acknowledge and agree to use best efforts to ensure that payments received from Customers after Closing be properly allocated between Buyer and Seller based on the periods of service to which such payments relate.

8.4 Transition Services. Buyer and Seller will cooperate to agree on an appropriate transition plan to insure a reasonably smooth transition of the Services and excellent customer service throughout the transition. The implementation of such a transition plan may require Seller to maintain office space, employees and other facilities following the Closing. If such transition services are required, Buyer will reimburse Seller for all out-of-pocket costs incurred by Seller in providing such transition services, excluding fixed salaries of Seller's senior executive employees.

H  
LB



## 9. INDEMNIFICATION OF BUYER

9.1 Generally. Seller hereby agrees to defend, indemnify and hold harmless Buyer, its affiliates, and each of their respective officers, managers, members, partners, subsidiaries, employees, successors, assigns, agents and representatives against and with respect to any and all claims, demands, suits, proceedings, judgments, assessments, causes of action, losses, damages, deficiencies, injuries, liabilities, fines, penalties, legal and other expenses and costs resulting from, arising out of or in connection with:

(a) the operation and ownership of the Acquired Assets prior to and including the Closing Date; and

(b) any misrepresentation, omission, or breach of any representation or warranty on the part of Seller under this Agreement; and

(c) any non-fulfillment or breach of any covenant or agreement on the part of Seller or Beaty under this Agreement.

9.2 Third-Party Claims. In the event that Buyer becomes aware of a third-party claim which Buyer believes gives rise to indemnification under this Article 9, Buyer shall promptly notify Seller of such claim, and Seller shall be entitled, at its expense, to participate in any defense of such claim; *provided, however*, that the failure to give prompt notice shall not affect the indemnification provided hereunder except to the extent Seller has been actually prejudiced as a result of such failure. Buyer shall have the right in its sole reasonable discretion to settle any such claim; *provided, however*, that Buyer may not effect the settlement of any such claim without the consent of Seller, which consent shall not be unreasonably withheld. In the event that Seller has consented to any such settlement, Seller shall have no power or authority to object to any claim by Buyer for indemnity in the amount of such settlement.

9.3 Exclusive Remedy. Buyer acknowledges and agrees that its sole and exclusive remedy with respect to any and all claims relating to the subject matter of this Agreement shall be pursuant to the indemnification provisions set forth in this Article 9.

9.4 Right of Set-Off. Buyer may satisfy any indemnification claim under this Article 9 by deducting the amount of such claim from any amounts due to Seller.

## 10. INDEMNIFICATION OF SELLER

10.1 Generally. Buyer hereby agrees to defend, indemnify and hold harmless Seller, its affiliates, and each of their respective officers, managers, members, partners, subsidiaries, employees, successors, assigns, agents and representatives against and with respect to any and all claims, demands, suits, proceedings, judgments, assessments, causes of action, losses, damages, deficiencies, injuries, liabilities, fines, penalties, legal and other expenses and costs resulting from, arising out of or in connection with:

(a) the operation and ownership of the Acquired Assets after the Closing Date; and